

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Clarence Edward Cyrus, #95574-071,)	C/A NO. 8:07-2720-CMC
)	
Plaintiff,)	
)	OPINION and ORDER
v.)	
)	
United States of America,)	
)	
Defendant.)	
_____)	

This matter is before the court on Plaintiff's complaint filed in this court pursuant to 28 U.S.C. § 2201.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bruce Howe Hendricks for pre-trial proceedings and a Report and Recommendation. On August 22, 2007, the Magistrate Judge issued a Report recommending that the complaint be dismissed without prejudice and without issuance and service of process. The Magistrate Judge advised Plaintiff of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Plaintiff filed objections to the Report on September 17, 2007.¹

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo*

¹On August 29, 2007, the clerk of court received a copy of a "Motion to Alter or Amend Judgement [sic] Based on Error of Law" The Clerk docketed this motion in the current case; however, this motion is directed to the United States District Court for the Middle District of Florida, and pertains to an action in that court. Therefore, this motion should be terminated from the docket of this case.

determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and Plaintiff's objections, the court agrees with the conclusions of the Magistrate Judge. Plaintiff contends that this action is necessary because he needs to exhaust his administrative remedies. Objections at 1,2,3 (Dkt. # 11, filed Sept. 17, 2007). This contention is without merit, particularly as a declaratory judgment action is a judicial action, not an administrative action.

Accordingly, the court adopts and incorporates the Report and Recommendation by reference in this Order. This matter is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
September 25, 2007